

PETITION UNDER 28 USC § 2254 FOR WRIT OF
HABEAS CORPUS BY A PERSON IN STATE CUSTODY

02 CV 00009

United States District Court for the Southern District of New York

Name RAFAEL MARTINEZ	Prisoner Identification No. 93-A-2733
Place of Confinement Clinton Correctional Facility PO Box 2001 Dannemora, New York 12929	
Name of Petitioner (include name under which convicted) RAFAEL MARTINEZ	Name of Respondent (warden or superintendent of your prison) v. DANIEL SENKOWSKI, Superintendent Clinton Correctional Facility

PETITION

- Name and location of court which entered the judgment of conviction under attack New York State Supreme Court, New York County
- Name and address of lawyer who represented you Richard L. Giampa
860 Grand Concourse, Suite 1H, Bronx, New York 10451
- Date of judgment of conviction 4-8-93
- Length of sentence 213 years to life
- Nature of offense involved (all counts) Murder 2°, Conspiracy 2°, Attempted Murder
Criminal Sale of Firearm 3°, Criminal Sale Controlled Substance
Criminal Possession Controlled Substance 3°, Criminal Possession
Weapon 3°
- What was your plea? (Check one)

(a) Not guilty	<input checked="" type="checkbox"/>
(b) Guilty	<input type="checkbox"/>
(c) Nolo contendere	<input type="checkbox"/>

If you entered a guilty plea to one count of indictment, and not a guilty plea to another count of indictment, give details:

- If you pleaded not guilty, what kind of trial did you have? (Check one)

(a) Jury	<input checked="" type="checkbox"/>
(b) Judge only	<input type="checkbox"/>
- Did you testify at the trial?
Yes ☐ No ☒
- Did you appeal from the judgment of conviction?
Yes ☒ No ☐

10. If you did appeal, answer the following:

- (a) Name of court New York State Appellate Division, 1st Dept.
- (b) Name and address of lawyer who represented you Thomas F. Grice 2 Pennsylvania Plaza
New York, N.Y. 10121
- (c) Result Judgment of conviction affirmed
- (d) Date of result and citation, if known 6-4-98 251 AD2d 51 (1st Dept. 1998)
- (e) Grounds raised See annexed memorandum

(f) If you sought further review of the decision by appeal to a higher state court, please answer the following:

- (1) Name of court New York Court of Appeals
- (2) Name and address of lawyer who represented you Same as "106"
- (3) Result Leave to appeal denied
- (4) Date of result and citation, if known 11-24-98 92 NY2d 984 (1998)
- (5) Grounds raised See annexed memorandum

(g) If you filed a petition for Writ of Certiorari in the United States Supreme Court, please provide the date the petition was filed and the date of result and citation, if known

n/a

(1) Name and address of lawyer who represented you _____

11. Other than a direct appeal from the judgment of conviction and sentence, have you previously filed any petitions, applications, or motions with respect to this judgment in any court, state or federal?

Yes ☒ No ☐

12. If your answer to 10 was "yes," give the following information:

- (a) (1) Name of court New York State Supreme Court, New York County
- (3) Name and address of lawyer who represented you n/a
- (2) Nature of proceeding Motion to vacate
- (3) Grounds raised See annexed memorandum

(4) Did you receive an evidentiary hearing on your petition, application or motion?

Yes ☐

No ☒

(5) Date motion was filed with the Court 11-4-99

(6) Date and result of motion 9-15-00 Motion denied

(b) As to any second petition, application or motion give the same information:

(1) Name of court New York State Appellate Division, 1st Dept.

(2) Name and address of lawyer who represented you n/a

(3) Nature of proceeding Coram nobis

(4) Grounds raised See annexed memorandum

(5) Did you receive an evidentiary hearing on your petition, application or motion?

Yes ☐

No ☒

(6) Date motion was filed with the Court 3-5-01

(7) Date and result of motion 12-20-01 Motion denied

(c) Did you appeal the decision of any petition, application or motion to the highest state court having jurisdiction?

(1) First petition, etc.

Yes ☒

No ☐

(2) Second petition, etc.

Yes ☒

No ☐

(d) If you did *not* appeal from the adverse action on any petition, application or motion, explain briefly why you did not:

13. **STATE EVERY GROUND ON WHICH YOU CLAIM THAT YOU ARE BEING HELD UNLAWFULLY. IF YOU ARE RAISING THE SAME GROUNDS THAT YOU RAISED ON DIRECT APPEAL, YOU SHOULD ATTACH A COPY OF YOUR STATE COURT APPELLATE BRIEF. YOU MUST EXHAUST YOUR STATE COURT REMEDIES ON EACH GROUND YOU ARE CLAIMING YOU ARE BEING HELD UNLAWFULLY.**

Ground(s):

See annexed memorandum

14. **TIMELINESS OF PETITION:** If your judgment of conviction was made final over one year ago, you must set forth below why the one-year statute of limitations as codified in 28 U.S.C. § 2244(d) does not bar your petition.*

n/a

* The Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA") as codified in 28 U.S.C. § 2244(d) provides in part that:

- (1) A 1-year period of limitation shall apply to an application for a writ of habeas corpus by a person in custody pursuant to the judgment of a State court. The limitation period shall run from the latest of --
 - (A) the date on which the judgment became final by the conclusion of direct review or the expiration of the time for seeking such review;
 - (B) the date on which the impediment to filing an application created by State action in violation of the Constitution or laws of the United States is removed, if the applicant was prevented from filing by such state action;
 - (C) the date on which the constitutional right asserted was initially recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or
 - (D) the date on which the factual predicate of the claim or claims presented could have been discovered through the exercise of due diligence.
- (2) The time during which a properly filed application for State post conviction or other collateral review with respect to the pertinent judgment or claim is pending shall not be counted toward any period of limitation under this subsection.

15. Do you have a petition or appeal now pending in any court, either state or federal, as to the judgment under attack?
Yes ☐ No ☒

16. Do you have any future sentence to serve after you complete the sentence imposed by the judgment under attack?
Yes ☐ No ☒

(a) If so, give name and location of court which imposed sentence to be served in the future: _____

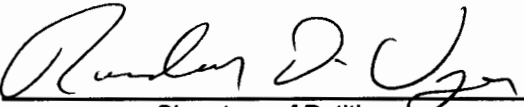
(b) Give date and length of the above sentence: _____

Wherefore, petitioner prays that the Court grant petitioner relief to which he may be entitled in this proceeding.

I declare under penalty of perjury that the foregoing is true and correct. Executed on

1-2-02

(date)



Signature of Petitioner
RANDALE D. JACON
Attorney for Petitioner

Address
125-10 Queens Blvd. Suite 2702
Kew Gardens N.Y. 11415

718-261-5000

I declare under penalty of perjury that on _____, I delivered this petition to prison authorities to be
(date)
mailed to the United States District Court for the Southern District of New York.

Signature of Petitioner